

APPEAL NO. 041425
FILED AUGUST 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 6, 2004. With respect to the single issue before him, the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 22% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In its appeal, the appellant (carrier) argues that the hearing officer erred in giving presumptive weight to the designated doctor's IR. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable left shoulder injury on _____. The parties stipulated that the claimant reached maximum medical improvement on January 23, 2004, as certified by Dr. G, the designated doctor selected by the Commission. The claimant had shoulder surgery on August 11, 2003.

The hearing officer did not err in giving presumptive weight to the designated doctor's report, and in determining that the claimant's IR is 22% in accordance with that report. We cannot agree that the treating doctor's report constitutes the great weight of the other medical evidence contrary to the designated doctor's report. Rather, this is a case where there is a genuine difference of medical opinion between the designated doctor and the treating doctor as to the correct IR to assign for loss of range of motion (ROM) in the left shoulder (the designated doctor assigned a 12% upper extremity rating for loss of ROM while the treating doctor assigned a 7% upper extremity rating for loss of ROM) and whether to assign a rating for grip strength loss. We have long held that by giving presumptive weight to the designated doctor, the 1989 Act provides a mechanism for accepting the designated doctor's resolution of such differences. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers' Compensation Commission Appeal No. 001526, decided August 23, 2000. Accordingly, the hearing officer did not err in giving presumptive weight to the designated doctor's report and adopting the 22% IR. As the hearing officer noted, the concerns about the designated doctor's ROM rating and his decision to assign a rating for loss of grip strength were addressed to him in a letter of clarification. He provided a detailed response to those concerns and maintained his opinion that the claimant's IR is 22%. Finally, we find no merit in the carrier's assertion that the validity of the ROM measurements made by the designated doctor is "suspect" because he did not provide his ROM worksheets. Nothing in our review of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) demonstrates that ROM worksheets are required in relation to testing of loss of ROM in the shoulder. ROM worksheets have been required in cases where a rating

is assigned for loss of ROM in the spine. However, that requirement is based upon the tests for reproducibility and validity that are specifically included in the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association in relation to testing loss of ROM in the spine.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**DR. SJ
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge